

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5058 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and

Honble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

YASINALI AHMEDALI SAIYAD

Versus

SPECIAL LAND ACQUISTIION OFFICER (MAHI CANAL)

Appearance:

MR GM AMIN for Petitioners

Mr. H.L.Jani, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/08/1999

ORAL JUDGEMENT (Per:Panchal.J)

Rule.

#. Mr. H.L.Jani, learned A.G.P waives service of notice
of Rule on behalf of respondents. At the joint request

of the learned advocates appearing for the parties, the petition is taken up for final hearing today.

#. By means of filing this application under Article 226 of the Constitution, the petitioners have prayed to issue a writ of mandamus or any other appropriate writ, order or direction calling upon the respondents to make an award under section 28(A) of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act) in relation to the lands bearing survey numbers 1041/4, 1044/5 and 1024/1 situated in the sim of village Kapadwanj, Taluka Kapadwanj, District Kheda which belonged to the petitioners with running interest at the rate of 18 percent per annum from the date of the filing of applications under section 28(A) of the said Act till realisation.

#. The petitioners were owners of lands bearing survey numbers 1041/4, 1044/5 and 1024/1 situated in the sim of village Kapadwanj, Taluka Kapadwanj, District Kheda. The lands belonging to the petitioners and others were acquired for public purpose of laying down Nadiad-Kapadwanj-Modasa railway line pursuant to the publication of the preliminary Notification under section 4(1) of the said Act in the Government Gazette on January 10, 1980 and corrigendum which was published in Government Gazette on April 4, 1981. The Special Land Acqu. Officer had made an award dated January 10, 1986 determining the market value of the lands of the petitioners and others. Some of the claimants were of the opinion that determination of market value by the Special Land Acquisition Officer (Mahi-Canal), Nadiad was inadequate and they had sought references. The Reference Court, in Land Referenced Cases Nos. 250 to 285 of 1986 enhanced the compensation by judgment and award dated January 6, 1990. The petitioners had not filed any application under section 18 of the Act requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of the appropriate compensation in respect of their lands. Therefore, the petitioners filed an application under section 28(A) of the said Act and requested the Special Land Acquisition Officer to redetermine the market value of their acquired lands in the light of the judgment and award rendered by the District Judge in Reference Cases Nos. 250 to 285 of 1986. The applications submitted by the petitioners were not decided by the Special Land Acquisition Officer and therefore, the petitioners were constrained to file petition before the High Court and the High Court had directed the Special Land Acquisition Officer to decide the applications filed by the petitioners under section

28(A) of the said Act within the time stipulated therein. Thereafter the applications submitted under section 28(A) of the said Act were rejected on the ground of delay and therefore, the petitioners had approached the High Court by way of filing Special Civil Application No.6422 of 1995. In the said petition the Court, by order dated September 22,1995 directed the Special Land Acquisition Officer to hear the petitioners and pass appropriate orders on the applications submitted by the petitioners under section 28(A) of the said Act in accordance with law. A copy of the order passed by the High Court is produced by the petitioners at Annexure A. to the petition.

#. The petitioners have averred in the petition that the respondent no.1 did not decide the applications submitted by them under section 28(A) of the said Act and therefore, a notice dated December 30,1997 was served on the respondent no.1 calling upon him to decide the applications. A copy of the notice served on the respondent no.1 is produced by the petitioners at Annexure.B to the petition. The grievance made by the petitioners in the present petition is that inspite of the directions given by the High Court, the respondent no.1 has failed to make an award as required by section 28(A) of the said Act. Under the circumstances, the petitioners have filed the present petition and claimed the reliefs to which reference is made earlier.

#. Though the respondents are duly served no affidavit in reply has been filed controverting the averments made in the petition. The fact that in cases of other claimants the District Court has awarded more compensation than determined by the Special Land Acquisition Officer is not in dispute. The petitioners were interested persons within the meaning of section 28(A) of the Act and had not sought reference under section 18 of the said Act. Therefore, they were entitled to file application under section 28(A) of the said Act as their lands were covered by the same Notification published under section 4(1) of the Act. In spite of the directions given by the High Court in Special Civil Application No. 6422 of 1995 the respondent no.1 has failed to redetermine compensation payable to the petitioners in terms of the Judgment and Award of the District Court. Under the circumstances, we are of the opinion that this is a fit case wherein the respondent no.1 deserves to be directed to make an award under section 28(A) of the said Act within a reasonable time.

#. For the foregoing discussions, the petition partly succeeds. The respondent no.1 i.e. Special Land Acquisition Officer(Mahi Canal) Nadiad is directed to redetermine the compensation payable to the petitioners in the light of the judgment and award dated January 6,1990 rendered by the Reference Court in Reference Cases Nos. 250 to 285 of 1986 as early as possible and preferably within two months from the date of this order. After redetermination of the compensation, the same shall be paid to the petitioners without any loss of time. The office is directed to send a copy of this order to the respondent no.1 immediately. It will also be open to the petitioners to produce certified copy of this order before the respondent no.1 for compliance. Rule is made absolute in the aforesaid terms with no order as to costs.